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11 Attorney for Plaintiff PRESTON SMITH

12 **UNITED STATES DISTRICT COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA**

14 PRESTON SMITH, an individual,

15
16 Plaintiff,

17 vs.

18
19 CITY OF BURBANK, BURBANK
20 POLICE DEPARTMENT,
21 BURBANK POLICE
22 DEPARTMENT OFFICER
23 GUNN; BURBANK POLICE
24 DEPARTMENT OFFICER
25 BAUMGARTEN; BURBANK
26 POLICE DEPARTMENT
27 OFFICER EDWARDS, and DOES
28 1 through 100, inclusive,

Defendants.

CASE NO. CV 10-8840 R (AGR_x)

**NOTICE OF LODGING PRE-TRIAL
CONFERENCE ORDER**

1 TO THE COURT, ALL PARTIES AND THEIR ATTORNEYS OF
2 RECORD:

3
4 PLEASE TAKE NOTICE THAT THAT Plaintiff Smith lodged with the
5 court the Pre-Trial Conference Order. A copy of the Pre-Trial Conference Order is
6 attached hereto as Exhibit "A."
7

8
9 Dated: May 31, 2012

LAW OFFICES OF MANUEL H. MILLER
A Professional Corporation

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11
12 /s/ Michael Coletti
13 Michael Coletti
14 Attorney for Plaintiff
15 PRESTON SMITH
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EXHIBIT A

1 Manuel H. Miller, Esq. (SBN 36947)
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19 CITY OF BURBANK, BURBANK
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26 POLICE DEPARTMENT
27 OFFICER EDWARDS, and DOES
28 1 through 100, inclusive,

Defendants.

CASE NO. CV 10-8840 R (AGR_x)

PRE-TRIAL CONFERENCE ORDER

Pre-Trial

Conference: June 11, 2012
9:00 a.m.
Courtroom 8

Trial: July 10, 2012
9:00 a.m.
Courtroom 8

1 Following Pre-Trial proceedings, pursuant to Rule 16, F.R.CivP. and Local Rule
2 16;

3
4 IT IS ORDERED:

5
6 1. The parties are:

7 a. Plaintiff Preston Smith

8
9 b. Defendants City of Burbank, Burbank Police Department; Burbank Officers
10 Baumgarten and Edwards

11
12 c. Burbank Officer Gunn
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14
15 Each of these parties has been served and has appeared. All other parties named in
16 the pleadings and not identified in the preceding paragraph are now dismissed.

17
18 Further it should be noted that Plaintiff has agreed to dismiss Defendant Officer
19 Edwards and Defendant Officer Baumgarten with prejudice. Said stipulation
20 regarding dismissal shall be submitted forthwith.
21

22
23 The pleadings which raise the issues are:

24
25 a. Complaint filed September 22, 2010

26
27 b. Answer of Defendants City of Burbank, Burbank Police Department, officer
28 Baumgarten, and Officer Edwards filed with removal papers on

1 November 18, 2010

2 c. Answer to the Complaint of Officer Gunn filed on November 23, 2010.

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4
5 2. Federal jurisdiction and venue are invoked upon the grounds: Defendants City
6 of Burbank, Burbank Police Department, Officer Baumgarten and Officer Smith
7 removed the matter to Federal Court pursuant to 38 U.S.C. §1441(b) on the basis
8 of federal question jurisdiction. The facts requisite to invoke federal jurisdiction
9 are admitted.
10

11
12 3. Trial Estimate: 4-5 days.

13
14 4. The trial is to be a jury trial. At least 5 court days prior to the trial date each
15 counsel shall deliver to the Court and opposing counsel: (a) proposed jury
16 instructions as required by L.R. 51-1 and (b) any special questions requested to be
17 put to prospective jurors or voir dire.
18

19
20 5. The following facts are admitted and require no proof:

21 None

22
23 6. The parties do not presently anticipate any evidentiary objections to the
24 stipulated facts listed above, as there are no stipulated facts.

25
26 7. The following ultimate issues of fact, remain to be litigated at the trial:

27 Plaintiff:
28

1 a. Whether Defendants violated the Fourth Amendment to the Constitution in
2 connection with the arrest of Preston Smith. Whether Defendants violated
3 California Code of Civil Procedure section 52.1 in connection with the arrest of
4 Preston Smith. Whether Defendants intentionally inflicted emotional distress upon
5 Plaintiff during the course of his arrest. Whether Defendants committed an assault
6 and battery upon Preston Smith in connection with his arrest with respect to
7 tasing him multiple times and beating him with a flashlight.
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11 b. Plaintiff will show that he was subjected to physical violence in connection
12 with his arrest, that said violence consisted of being tasered multiple times and
13 beaten with a flashlight, that said actions were unnecessary and a violation of his
14 civil rights. Plaintiff will show that he suffered physical and emotional injury as a
15 result of the brutality to which he was subjected. Plaintiff will show that the
16 brutality that was affected upon him was intentional, malicious and oppressive. As
17 such Plaintiff entitled to the imposition of punitive and exemplary damages.
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21 c. Plaintiff intend to rely upon the testimony of the Plaintiff, the testimony of
22 Plaintiff's expert witnesses, the testimony of person(s) designated by any of the
23 Defendants as Persons Most Knowledgeable, the testimony of Plaintiff's healthcare
24 providers, the testimony of the custodian of records for any of the Plaintiff's
25 healthcare providers, the Plaintiff's medical records, bills and film, the individual
26 officers, the criminal file for the underlying criminal action, the physical evidence
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1 identified in the Joint Exhibit List, and the testimony of Defendants' expert
2 witnesses.

3
4
5 Defendants contend that the following issues remain for trial:

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7 a. Whether the individual Defendants are entitled to qualified immunity;
8 whether the individual Defendants used force that was unreasonable; whether the
9 City had a custom, policy, or practice that violated Plaintiff's Constitutional rights;
10 whether the individual Defendants used threats, intimidation, or coercion to
11 interfere with Plaintiff's rights; and whether Plaintiff suffered from extreme
12 emotional distress; and whether Plaintiff's conviction under Penal Code § 148 bars
13 his claims as a matter of law.

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17 b. Defendants contend that Plaintiff must establish the following elements to
18 prevail on his Fourth Amendment violation claim based upon excessive force: (a)
19 the individual Defendants were acting under the color of law; and the individual
20 Defendants deprived Plaintiff of his Fourth Amendment rights by using force
21 against Plaintiff that was not objectively reasonable. Plaintiff must establish the
22 following elements to prevail on his California Civil Code § 52.1 claim: (a) the
23 individual Defendants violated Plaintiff's rights under state or federal law; and the
24 individual Defendants interfered with Plaintiff's rights through threats,
25 intimidation or coercion. Plaintiff must establish the following elements to prevail
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1 on his state law claim for intentional infliction of emotional distress: (a) the
2 individual Defendants engaged in outrageous conduct; (b) the individual
3 Defendants intended to cause, or reckless disregard of the probability of causing,
4 emotional distress; (c) Plaintiff suffered severe emotional distress; and (d) Officer
5 Gunn's outrageous conduct was the actual and proximate causation of Plaintiff's
6 emotional distress. Plaintiff must establish that the individual Defendants used
7 unreasonable force against Plaintiff to prevail on his assault and battery claim.
8
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10
11 The City of Burbank defendants contend the plaintiff cannot recover on state
12 law claims, that the plaintiff has failed to timely file a government claim; and that
13 Defendants are protected by qualified immunity.
14

15 c. Defendants intend to rely upon the testimony of the individual officers, the
16 testimony of Plaintiff, the criminal file for the underlying criminal action, the
17 physical evidence identified in the Joint Exhibit List, all witnesses identified in
18 Defendant City of Burbank and Burbank Police Department's Witness List and the
19 testimony of Defendants' expert witnesses.
20
21

22 8. Discovery remains to be completed, including the depositions of defendants and
23 the receipt of responses to written discovery propounded by Plaintiff to defendants.
24 Defendant City of Burbank and Defendant Burbank Police Department have not
25 agreed to allow written discovery to be conducted as against them.
26
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1 9. All disclosures under F.R.Civ.P. 26(a)(3) have been made. The Joint Exhibit
2 List of the parties has been filed herewith under separate cover as required by
3 Local Rule 16-5. Defendants object to Exhibits 100-112 and 114-122 on the basis
4 that the documents have not been disclosed pursuant to Rule 26 of the Federal
5 Rules of Civil Procedure, have not been identified with reasonable particularity,
6 and are subject to privilege under the official information privilege, as well as
7 California Penal Code § 832.5 *et. seq.* and California Evidence Code § 1040 *et.*
8 *seq.*

9 10. All disclosures under F.R.Civ.P. 26(a)(3) have been made. Witness lists of the
10 parties have heretofore been filed with the Court.

11 11. The parties do not presently intend to present evidence by way of deposition
12 testimony in accordance with Local Rule 16-2.8.

13 12. The following law and motion matters are pending or contemplated:
14 Defendants' Motion for Summary Judgment.

15 13. Bifurcation of the following issues for trial is ordered: Defendant City of
16 Burbank intends to seek bifurcation of all liability issues relating to the City of
17 Burbank into a second phase of trial. Defendant Gunn contends that any issue
18 concerning the amount, if any, of punitive damages to be awarded should be
19 bifurcated into a second phase of trial. Defendants City of Burbank and Burbank
20 Police Department will seek bifurcation of punitive damages as to them..

1 Plaintiff intends to oppose the motions as identified by Defendants.

2 14. The foregoing admissions having been made by the parties, and the parties
3 having specified the foregoing issues of fact and law remaining to be litigated, this
4 Pre-Trial Conference Order shall supersede the pleadings and govern the course of
5 the trial of this cause, unless modified to prevent manifest injustice.
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9 Dated: June , 2012
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UNITED STATES DISTRICT JUDGE
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20 Approved as to form and content.
21
22

23 /s/ Michael Coletti, Esq.
24 Michael Coletti , Esq.
25 LAW OFFICES OF MANUEL H. MILLER
26 Attorney for Plaintiff
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4 /s/ Carol Humiston, Esq.

5 Carol A. Humiston, Sr. Asst. Attorney
6 Office of the City Attorney
7 Office of the City Attorney
8 Attorney for Defendants City of Burbank,
9 Burbank Police Department, Officer Edwards
10 and Officer Baumgarten
11

12 /s/ Nathan A. Oyster, Esq.

13 Nathan A. Oyster, Esq.
14 Lawrence, Beach, Allen & Choi, PC.
15 Attorney for Defendant Gunn
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1 2 3 4 5 6 7	Dennis A. Barlow, City Attorney Juli C. Scott, Chief Assistant City Attorney Carol A. Humiston, Senior Asst. City Attorney Office of the City Attorney 275 E. Olive Avenue P.O. Box 6459 Burbank, CA 91510-6459	Attorneys for Defendants
8 9 10 11 12 13 14	David D. Lawrence, Esq. Dennis M. Gonzalez, Esq. Nathan A. Oyster, Esq. Lawrence Beach Allen & Choi, PC. 100 W. Broadway, Suite 1200 Glendale, CA 91210-1219 Tel: 818-545-1925 Fax: 818-545-1937	Attorneys for Defendant

Arutyunyan, Lusine

From: cacd_ecfmail@cacd.uscourts.gov
Sent: Thursday, May 31, 2012 5:20 PM
To: ecfnef@cacd.uscourts.gov
Subject: Activity in Case 2:10-cv-08840-R-AGR Preston Smith v. City of Burbank et al Notice of Lodging Proposed Pretrial Order

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UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA

Notice of Electronic Filing

The following transaction was entered by Miller, Manuel on 5/31/2012 at 5:19 PM PDT and filed on 5/31/2012

Case Name: Preston Smith v. City of Burbank et al

Case Number: 2:10-cv-08840-R-AGR

Filer: Preston Smith

Document Number: 61

Docket Text:

NOTICE OF LODGING Proposed Pretrial Conference Order Plaintiff Preston Smith.

(Attachments: # (1) Exhibit)(Miller, Manuel)

2:10-cv-08840-R-AGR Notice has been electronically mailed to:

Carol Ann Humiston chumiston@ci.burbank.ca.us, larutyunyan@ci.burbank.ca.us, lrosoff@ci.burbank.ca.us

David D Lawrence dlawrence@lbaclaw.com, bmoyer@lbaclaw.com

Dennis Michael Gonzales dgonzales@lbaclaw.com, dard@lbaclaw.com

Manuel H Miller miller4law@msn.com

Max A Sauler msauler@miller4law.com

Nathan A Oyster noyster@lbaclaw.com, clynch@lbaclaw.com

2:10-cv-08840-R-AGR Notice has been delivered by First Class U. S. Mail or by other means BY THE FILER to :

Dennis A Barlow

Burbank City Attorney Office
275 E Olive Ave
Burbank, CA 91502

Juli C Scott
Burbank City Attorney Office
275 E Olive Ave
Burbank, CA 91502

Michael Anthony Coletti
Stoll Nussbaum & Polakov
11601 Wilshire Blvd
Suite 200
Los Angeles, CA 90025-1738

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:C:\fakepath\Notice of Lodging Pre-Trial Conference Order.pdf

Electronic document Stamp:

[STAMP cacdStamp_ID=1020290914 [Date=5/31/2012] [FileNumber=13718867-0]
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6ee89370d8c669ab31abcb36d3599641aadd32b18292f294493820665aed4]]

Document description:Exhibit

Original filename:C:\fakepath\Pre Trial Conference Order.pdf

Electronic document Stamp:

[STAMP cacdStamp_ID=1020290914 [Date=5/31/2012] [FileNumber=13718867-1]
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